

TELECOMMUNICATIONS AND CABLE TV

Subscription and Billing Practices

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) regulates unfair and deceptive business practices. DATCP has adopted rules to prohibit unfair subscription and billing practices by telecommunications and cable TV service providers. These rules are found in Wisconsin Administrative Code chapter ATCP 123.

ATCP 123 prohibits unfair subscription and billing practices, including undisclosed charges, “slamming,” “cramming” and “negative option” practices. Violators may be prosecuted, and there is a private remedy for consumers.

Scope

ATCP 123 regulates subscription and billing practices related to telecommunications and cable TV services provided to consumers primarily for personal, family or household use. This includes:

- Telephone and cellular phone services.
- Cable TV services, including “satellite cable” services.

ATCP 123 does ***not*** apply to:

- Telecommunications or cable TV services provided to *businesses*.
- Telecommunications services that are actively regulated by the Wisconsin Public Service Commission (PSC) as public utility services.

Basic Principles

Although ATCP 123 regulates complex new technologies and methods of sale, it is based on the following old-fashioned principles:

- A consumer has a right to know what he or she is buying, and there should be a record of the deal. The free market works best when consumers have the information they need to make sound purchase decisions.
- “A deal is a deal.” If a provider agrees to provide certain services at a certain price, it is not fair to increase the price or materially alter the services without prior notice to the consumer. The consumer should have a chance to decide whether to continue under the new terms.

- A provider should not bill a consumer for services that the consumer has not ordered.
- A provider should not engage in deceptive subscription or billing practices.

Disclosing Subscription Terms

Under ATCP 123, providers of telecommunications and cable TV services must disclose subscription terms at or before the time the consumer subscribes. The disclosure must include:

- The services included in the subscription.
- The price, including incidental charges, which the consumer must pay for each service.
- The effective date of the subscription, and the expiration date if any.
- That prices are subject to change, if that is the case.
- Any cancellation charges or other limitations on the consumer's right to cancel the subscription at any time.

ATCP 123 provides limited exemptions for providers of long distance telephone and pay-per-view cable TV services. These providers must disclose general subscription charges, but need not disclose per-call or per-view charges if there is a method by which consumers can discover those charges before they make their long distance calls or pay-per-view selections.

Disclosure in Writing

Under ATCP 123, a provider must disclose subscription terms in writing. If a consumer subscribes orally or electronically, the provider may disclose the terms orally or electronically, but must later confirm the disclosure in writing and give the consumer at least 3 days to cancel. Under the rule:

- A "written" disclosure may include an electronic disclosure that the consumer can easily capture and retain for future reference.
- The provider may confirm subscription terms as part of the first billing, or within 15 days after the consumer subscribes, whichever occurs later.
- A provider may incorporate by reference, in its written confirmation, information contained in a telephone book or other reference document provided to the consumer.

Subscription Changes

Under ATCP 123, a provider may not increase the subscription price or change the material terms of a subscription unless one of the following applies:

- The provider gives the consumer notice between 25 and 90 days prior to the proposed change, and gives the consumer an opportunity to cancel the subscription before the change takes effect. (But see prohibition against “negative option” billing, described below.) A notice of a proposed subscription change may be included as part of a regular billing statement.
- The consumer orders the change.
- The subscription change does not alter the price of any service offering or the total amount billed to the consumer, and does not materially alter the consumer features, functions or capabilities that comprise the service offering.
- The change merely expands a service offering currently billed to the consumer, without doing any of the following:
 - Increasing the price of that service offering.
 - Combining that service offering with another service offering that the consumer can order separately, but which the consumer has not ordered.
 - Making other changes in the relevant consumer features, functions or capabilities that comprise the service offering.
- The change takes effect at the end of an introductory or other promotional period, and both the subscription terms and the post-promotion terms are disclosed at the outset of the subscription.
- The change involves a change in long distance telephone rates or pay-per-view cable TV rates that are subject to limited exemptions under the rule (see above).
- A telecommunications provider makes the change pursuant to a tariff filed with the Wisconsin Public Service Commission.

“Negative Option” Billing

Under ATPC 123, a provider may not bill a consumer for a service offering that the consumer has not affirmatively ordered. A consumer’s failure to reject a proposed service offering is not an affirmative order for service. A consumer may affirmatively order a service by oral, electronic or written means.

ATPC 123 does not require a provider to obtain an affirmative order from a consumer before expanding a service offering currently billed to that consumer unless the expansion has the effect of combining that service offering with another service offering that the consumer can order separately but has not ordered.

Automatic Renewal or Extension

Under ATCP 123, no subscription for a definite term may be automatically renewed pursuant to an automatic renewal clause in the subscription contract unless one of the following applies:

- The consumer is free to cancel the contract at any time.
- The provider gives the consumer a written reminder between 30 and 60 days prior to the scheduled renewal date. The provider may include the reminder notice as part of a regular billing statement.

General Prohibitions

Under ATCP 123, no provider may do any of the following:

- Offer to a consumer any prize, prize opportunity, or free or reduced price goods or services whose receipt is conditioned upon a subscription for telecommunications or cable TV services, unless the provider clearly discloses that a subscription is required.
- Misrepresent the provider's identity.
- Misrepresent that a consumer has subscribed to or received any telecommunications or cable TV service.
- Misrepresent the terms of a subscription.
- Fail to identify, in each bill, the service offerings for which the provider is billing the consumer.
- Fail to honor, in a timely manner, a consumer's request to cancel a subscription.
- Charge a fee for canceling a subscription, or for canceling any service offering, unless the provider disclosed that fee when the consumer first subscribed.
- Bill a consumer in violation of ATCP 123, or use any contract that purports to waive a consumer's rights under the rule.

Rule Background (ATCP 123)

- DATCP adopted ATCP 123 as a *general order* (rule) under Wisconsin's Unfair Business Practices Law, Wisconsin Statutes section 100.20. DATCP also adopted ATCP 123 under authority of Wisconsin Statutes section 100.207.
- DATCP adopted ATCP 123 with an effective date of January 1, 1997 (DATCP Administrative Docket No. 94-R-11).

Rule Enforcement (ATCP 123)

Private Remedy

A consumer who suffers a monetary loss because of a violation of ATCP 123 may sue the violator under Wisconsin Statutes section 100.20 to recover twice the amount of the loss, together with costs and attorneys fees.

Injunction and Restitution

DATCP may seek a court order under Wisconsin Statutes section 100.20(6), enjoining violations of ATCP 123 and ordering the violator to pay restitution to injured persons. The Department of Justice or a district attorney may represent DATCP in court.

Civil Forfeiture

DATCP or any district attorney may start a court action under Wisconsin Statutes section 100.26(6) to recover a civil forfeiture from a person who violates ATCP 123. The court may impose a civil forfeiture of up to \$10,000 per violation. The Department of Justice or a district attorney may represent DATCP in court.

Criminal Penalties

A district attorney may start a criminal prosecution, under Wisconsin Statutes section 100.26(3), against a person who violates ATCP 123. The person may be fined up to \$5,000 or sentenced to as much as a year in jail, or both.